

SERVICE DATE – JUNE 20, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36198 (Sub-No. 1)

NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION—TRACKAGE RIGHTS
EXEMPTION—ILLINOIS CENTRAL RAILROAD COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: June 13, 2018

On May 21, 2018, New Orleans Public Belt Railroad Corporation (NOPB Corp.) filed a verified notice of exemption in Docket No. FD 36198 for trackage rights under the class exemption at 49 C.F.R. § 1180.2(d)(7)² and simultaneously filed a petition in this sub-docket to partially revoke the exemption to allow the trackage rights to expire on January 31, 2020. Notice of the exemption in Docket No. FD 36198 was served and published in the Federal Register on June 6, 2018 (83 Fed. Reg. 26,337), and became effective on June 20, 2018. This decision addresses NOPB Corp.'s petition to partially revoke the exemption.

As explained by NOPB Corp. in its verified notice of exemption in Docket No. FD 36198, pursuant to a September 16, 2016 temporary trackage rights agreement and subsequent amendment, dated December 28, 2016, NOPB Corp.'s predecessor obtained temporary overhead trackage rights on approximately 6.3 miles of Illinois Central Railroad Company (IC) rail line in New Orleans, La., for the purpose of interchanging traffic with Kansas City Southern Railway Company (KCS) on KCS trackage in New Orleans on a trial basis. See New Orleans Pub. Belt R.R.—Temp. Trackage Rights Exemption—Ill. Cent. R.R., FD 36067 (STB served Jan. 30, 2017); New Orleans Pub. Belt R.R.—Temp. Trackage Rights Exemption—Ill. Cent. R.R., FD 36067 (STB served Oct. 14, 2016). NOPB Corp. states that it acquired its

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On June 1, 2018, NOPB Corp. supplemented its verified notice of exemption to certify that the traffic subject to the trackage rights does not involve an interchange commitment that limits interchange with a third-party connecting carrier. See NOPB Corp. Letter 1, New Orleans Pub. Belt R.R.—Trackage Rights Exemption—Ill. Cent. R.R., FD 36198.

predecessor's interest in the temporary trackage rights arrangement as part of the transaction authorized in New Orleans Public Belt Railroad—Acquisition & Operation Exemption—Public Belt Railroad Commission of New Orleans, FD 36149 (STB served Dec. 27, 2017).

NOPB Corp. states in its petition in this sub-docket that the temporary trackage rights were scheduled to expire on January 31, 2018, but NOPB Corp. and IC entered into a second amendment to the temporary trackage rights agreement, dated January 31, 2018, which further extended the trackage rights until January 31, 2020. NOPB Corp. filed the petition to partially revoke the exemption to allow the trackage rights to expire on that date.³ NOPB Corp. argues that granting its petition will promote the rail transportation policy, will be consistent with the limited scope of the transaction, and will not adversely affect the current competitive situation of any shipper.

DISCUSSION AND CONCLUSIONS

Although NOPB Corp. and IC have expressly agreed on the duration of the proposed trackage rights agreement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time period rather than lasting in perpetuity. See, e.g., Ind. R.R.—Trackage Rights Exemption—CSX Transp., Inc., FD 36068 (Sub-No. 1) (STB served Feb. 9, 2017); Ind. S. R.R.—Temporary Trackage Rights Exemption—Norfolk S. Ry., FD 35965 (Sub-No. 1) (STB served Nov. 25, 2015).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

NOPB Corp.'s trackage rights were already authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7) in Docket No. FD 36198. Granting partial revocation in these circumstances would promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. §§ 10101(2), (7), and (15). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously

³ NOPB explains in its notice of exemption that because the extended trackage rights were to be more than a year in duration, the class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8) was not available.

exempted.⁴ Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36198 to expire on January 31, 2020.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 36198 are exempted, as discussed above, to permit the trackage rights to expire on January 31, 2020, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice will be published in the Federal Register on June 20, 2018.
4. This decision is effective on July 20, 2018. Petitions to stay must be filed by July 2, 2018. Petitions for reconsideration must be filed by July 10, 2018.

By the Board, Board Members Begeman and Miller.

⁴ Because the proposed transaction is of limited scope, the Board need not make a market power finding.